IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WA.No. 1520 of 2007

AGAINST THE JUDGEMENT IN WPC.15774/2007 Dated 30/05/2007
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APPELLANT: PETITIONER

ASWIN M.PILLAI,
AGED 13 YEARS, S/O.MURALEEDHARAN PILLAI,
THITTAVILKA VEEDU, DECENT JUNCTION P.O.,
KOLLAM, REP.BY HIS NEXT FRIEND AND NATURAL
GUARDIAN M.MURALEEDHARAN PILLAI, THITAVILA VEEDU,
DECENT JUCTION P.O., KOLLAM.

BY ADV. SRI.K.N.CHANDRABABU

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA,
REP.BY THE SECRETARY TO THE REVENUE & TAXES,
THIRUVANANTHAPURAM.

2. TAHSILDAR (REVENUE RECOVERY),
KOLLAM.

3. B.SREEKALA,
PROPRIETOR, RADHA CASHEW TRADERS, AYATHIL PO,
KOLLAM.

R1 & 2 BY SPL. GOVERNMENT PLEADER (TAXES) SRI V.V.ASHOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No.1520 of 2007

Dated, this the 26th day of June, 2007

JUDGMENT

H.L. DATTU, CJ.

Petitioner is a minor and is represented by his father as the natural guardian. He was before this court in W.P.(C) No.15774 of 2007 inter alia questioning the advertisement for auction issued by the Tahsildar, Kollam for realisation of tax due under the provisions of the Kerala General Sales Tax Act, 1963 (the Act for short).

2. The primary contention of the learned counsel for the petitioner before the learned Single Judge was that proceedings against the minor's property could not have been done by the Tahsildar for realisation of tax dues from the third respondent viz. Smt. Sreekala who is none other than the mother of the petitioner.

3. In the instant case the assessing authority has completed the assessments for the years 1993-94 to 1996-97. After completion of the assessment proceedings, some time in the year 1999 the 3rd respondent has transferred an immovable property in favour of the petitioner. Even that property is subject matter of the auction notice dated 15.5.2007.

4. Section 26A of the Act reads as under:

> "**Certain transfers to be void:-** (1) Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever), of any of his assets in

favour of any person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act."

5. The aforesaid provision would indicate that the pendency of any proceedings under the Act or after the completion thereof, if an assessee creates a charge on or parts with the possession either by way of sale, mortgage, gift etc. of any of his assets in favour of any person, such charge or transfer shall be void.

6. The facts are not in dispute. The assessment proceedings for the assessment years 1993-94 to 1996-97 had been completed against the third respondent. It was only in the year 1999 the third respondent had transferred the property in favour of the petitioner. Such transfer is hit by section 26A of the Act. Keeping these aspects of the matter in view, the learned Single Judge, in our opinion, has rightly rejected the writ petition. Therefore interference on such order is not called for. Accordingly the writ appeal is rejected. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/